Rocket Software License Agreement

V20100609

IMPORTANT: READ CAREFULLY

The Rocket Software License agreement is comprised of the following three files:

1. Software License Agreement – (This document)
2. License Information
3. Notices and Information (where applicable)

Two license agreements are presented below.

1. Software License Agreement for Evaluation of Programs
2. Software License Agreement

If you are obtaining the Program for purposes of productive use (other than evaluation, testing, trial "try or buy," or demonstration): By clicking on the "Accept" button below or when you install the program, You accept the Rocket Software License Agreement, without modification.

If you are obtaining the Program for the purpose of evaluation, testing, trial "try or buy," or demonstration, (collectively, an "Evaluation"): By clicking on the “Accept” button below or when you install the program, You accept both (i) the Rocket Software License Agreement for Evaluation of Programs (the "Evaluation License"), without modification; and (ii) the Rocket Software License Agreement (the "SLA"), without modification.

The Evaluation License will apply during the term of Your Evaluation.

The SLA will automatically apply if You elect to retain the Program after the Evaluation (or obtain additional copies of the Program for use after the Evaluation) by entering into a procurement agreement.

The Evaluation License and the SLA are not in effect concurrently; neither modifies the other; and each is independent of the other.

The complete text of each of these two license agreements follow.

Software License Agreement for Evaluation of Programs

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND

- PROMPTLY RETURN THE PROGRAM TO THE PARTY FROM WHOM YOU ACQUIRED IT. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"Rocket" is Rocket Software, Inc. or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and U2BusinessConnect Entitlement Record and is the complete agreement between You and Rocket regarding the use of the Program. It replaces any prior oral or written communications between You and Rocket concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of a signed agreement between You and Rocket, the terms of the latter agreement prevail.

1. Entitlement

License

The Program is owned by Rocket or a Rocket supplier, and is copyrighted and licensed, not sold.

Rocket grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program only for internal evaluation, testing, or demonstration purposes, on a trial or "try-and-buy" basis; and 2) make and install a reasonable number of copies, including a backup copy, of the Program to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

THE PROGRAM MAY CONTAIN A DISABLING DEVICE THAT WILL PREVENT IT FROM BEING USED AFTER THE EVALUATION PERIOD ENDS. YOU WILL NOT TAMPER WITH THIS DISABLING DEVICE OR THE PROGRAM. YOU SHOULD TAKE PRECAUTIONS TO AVOID ANY LOSS OF DATA THAT MIGHT RESULT WHEN THE PROGRAM CAN NO LONGER BE USED.

You will 1) maintain a record of all copies of the Program and 2) ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

The evaluation period begins when You agree to the terms of this Agreement and ends 1) as of the duration or date specified in the License Information, or 2) when the Program automatically disables itself. There is no charge for the use of the Program for the duration of the evaluation period. Unless Rocket specifies in the License Information that You may retain the Program, You will remove all installed copies and destroy the Program and any copies made of it within ten days of the end of the evaluation period. If Rocket specifies that You may retain the Program, and You elect to do so, the Program will be then subject to a different license agreement, that will be provided to You at that time. In addition, a charge may apply.

Rocket may terminate Your license if You fail to comply with the terms of this Agreement. If Rocket does so, You must destroy all copies of the Program.

2. No Warranty

SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, ROCKET MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY.

The exclusion also applies to any of Rocket's Program developers and suppliers.

Manufacturers, suppliers, or publishers of non-Rocket Programs may provide their own warranties.

Rocket does not provide technical support, unless Rocket specifies otherwise.

3. Limitation of Liability

Circumstances may arise where, because of a default on Rocket's part or other liability, You are entitled to recover damages from Rocket. In each such instance, regardless of the basis on which You may be entitled to claim damages from Rocket, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Rocket is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to Rocket's Program developers and suppliers. It is the maximum for which they and Rocket are collectively responsible.

UNDER NO CIRCUMSTANCES IS ROCKET, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;

2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR

3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

4. General

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

3. You may not export the Program.

4. You agree to allow Rocket to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of Rocket for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).

5. Neither You nor Rocket will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

6. Neither You nor Rocket is responsible for failure to fulfill any obligations due to causes beyond its control.

7. This Agreement will not create any right or cause of action for any third party, nor will Rocket be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which Rocket is legally liable.

5. Governing Law, Jurisdiction, and Arbitration

Governing Law

Both You and Rocket consent to the application of the laws of the Commonwealth of Massachusetts, United States to govern, interpret, and enforce all of Your and Rocket's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Jurisdiction

All of our rights, duties, and obligations are subject to the local, state, and federal courts of the Commonwealth of Massachusetts, USA.

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- PROMPTLY RETURN THE PROGRAM AND U2BUSINESSCONNECT ENTITLEMENT RECORD TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

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"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

Your U2BusinessConnect Entitlement Record is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. This is also evidence of Your eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If Rocket does not provide You with a U2BusinessConnect entitlement record, then Rocket may accept the original paid sales receipt or other sales record from the party (either Rocket or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"Warranty Period" - one year, starting on the date the original Licensee is granted the license.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and U2BusinessConnect Entitlement Record and is the complete agreement between You

and Rocket regarding the use of the Program. It replaces any prior oral or written communications between You and Rocket concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of a signed agreement between You and Rocket, the terms of the latter agreement prevail.

1. Entitlement

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Rocket grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in Your U2BusinessConnect Entitlement Record and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

Every virtualized environment must have its own U2 license.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

Rocket may terminate Your license if You fail to comply with the terms of this Agreement. If Rocket does so, You must destroy all copies of the Program and Your U2BusinessConnect entitlement record.

2. Licensing Fees

Licensing fees are based on the level of use acquired which is specified in Your U2BusinessConnect Entitlement Record and/or contract. Rocket does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify Rocket or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on Rocket's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

3. Limited Warranty

Rocket warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. Rocket does not warrant uninterrupted or error-free operation of the Program or that Rocket will correct all Program defects. You are responsible for the results obtained from the use of the Program.

Rocket provides You with access to Rocket databases containing information on defect corrections, restrictions, and bypasses at no additional charge. Rocket will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period").
THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

4. Limitation of Liability

Circumstances may arise where, because of a default on Rocket's part or other liability, You are entitled to recover damages from Rocket. In each such instance, regardless of the basis on which You may be entitled to claim damages from Rocket, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Rocket is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to Rocket's Program developers and suppliers. It is the maximum for which they and Rocket are collectively responsible.

UNDER NO CIRCUMSTANCES IS ROCKET, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;

2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR

3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

5. Compliance Verification

For purposes of this Section 11 (Compliance Verification), "SLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by Rocket, and 2) Rocket Software policies that may be made available from time to time or upon request, including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

5.1 Verification Process

Licensee agrees to create, retain, and provide to Rocket and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the SLA Program Terms, including, without limitation, all of Rocket's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with SLA Program Terms.

Upon reasonable notice, Rocket may verify Licensee's compliance with SLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to SLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. Rocket may use an independent auditor to assist with such verification, provided Rocket has a written confidentiality agreement in place with such auditor.

5.2 Resolution

Rocket will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the SLA Program Terms. Licensee agrees to promptly pay directly to Rocket the charges that Rocket specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

6. Third Party Notices

The Program may include third party code that Rocket, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices Rocket identifies third party code as "Modifiable Third Party Code," Rocket authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. Rocket's service and support obligations, if any, apply only to the unmodified Program.

7. General

7.1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

7.2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

7.3. You agree to comply with all applicable export and import laws and regulations.

7.4. You agree to allow Rocket to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of Rocket for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).

7.5. Neither You nor Rocket will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

7.6. Neither You nor Rocket is responsible for failure to fulfill any obligations due to causes beyond its control.

7.7. This Agreement will not create any right or cause of action for any third party, nor will Rocket be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which Rocket is legally liable.

8. Governing Law, Jurisdiction, and Arbitration

Governing Law

Both You and Rocket consent to the application of the laws of the Commonwealth of Massachusetts, USA to govern, interpret, and enforce all of Your and Rocket's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

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Jurisdiction

All of our rights, duties, and obligations are subject to the local and federal courts located in Massachusetts, United States.